IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6356 OF 2006

Manohar R. Rewale. .. Petitioner.

vs.

State of Maharashtra & Ors. .. Respondents.

Mr. D.B. Sawant for petitioner.

Mr. A.L. Palekar, AGP., for respondents.

CORAM : A.P. DESHPANDE, J.

DATE : 6th November, 2006.

P.C.

. Rule. Rule made returnable forthwith. Taken up for final hearing by consent of parties.

2. The petitioner questions the legality and validity of that part of the order passed by Minister for State Excise which directs that the renewal of the licence shall be subject to the payment of licence fee chargeable for the CL-III licence during the period for which the petitioner's business was closed down together with interest thereon. It is the condition subject to which the renewal of licence is granted which is under challenge.

3. The learned counsel for the petitioner submits that there is no provision in the Bombay Prohibition Act which permits the State Government to charge the licence fee for the period for which the licence was not operated by the petitioner and identical issue has been decided by the Division bench of this Court vide order dated 1.102003 (Coram : C.K. Thakker, C.J. & Abhay S. Oka, J.). Other orders passed in similar fact situation are also placed on record following the above referred Division Bench decision. Now an unescapable conclusion is to be reached that there is no power with the State Government which empowers the authorities to demand licence fee for the period for which the petitioner has not carried on the business.

4. The learned AGP appearing for the State inviting my attention to para 7 of the order passed by the Division Bench states that the authorities shall inquire into the period for which the petitioner has operated the licence and shall charge the licence fee for the said period only and not for the period for which the licence has not been operated upon.

5. In the result, the writ petition is allowed. That part of the impugned order which directs the

payment of the licence fee together with interest for the entire period for which the petitioner has not carried on business under the licence is quashed and set aside. The respondents are directed to only recover the licence fee for the period for which the petitioner has carried on business under the licence.

6. Rule is made absolute in the above terms. The writ petition is accordingly allowed with no order as to costs.

(A.P. Deshpande, J.)